

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Neil Adams McGinnis,)	
)	
Petitioner,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
vs.)	
)	
Warden James Slayer et al.,)	
)	Case No. 1:23-cv-018
Respondent.)	

Before the Court is Petitioner Neil Adams McGinnis’ petition for habeas relief under 28 U.S.C. § 2254. On April 20, 2023, and after initial review of the petition, Magistrate Judge Clare R. Hochhalter issued a Report and Recommendation, in which he recommended that the petition be dismissed without prejudice pursuant to Rule 4 of the Rules Governing § 2254 cases. See Doc. No. 12. McGinnis filed an objection and to the Report and Recommendation on May 8, 2023. See Doc. No. 14.

The Court has carefully reviewed the Report and Recommendation, and the entire record, and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Doc. No. 12) in its entirety, and **ORDERS** as follows:

1. The Court **DISMISSES** without prejudice McGinnis’ petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Doc. No. 2).
2. The Court certifies that an appeal from the denial of this petition may not be taken in forma pauperis because such a appeal would be frivolous and cannot be taken in good faith.
3. The Court finds dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). If the Petitioner desires further review of his motion he may request issuance of a

certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated this 11th day of May, 2023.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court